



The Commonwealth of Massachusetts
OFFICE OF THE
DISTRICT ATTORNEY

BRISTOL DISTRICT

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MuckRock News
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December 11, 2018

Re: Public Records Request to North Attleboro Police Department
Aaron Hernandez

Dear Mr. Hatziefstathiou:

The North Attleboro Police Department received your request for public records on November 28, 2018. This office is answering on behalf of the North Attleboro Police Department. This response to your request is provided timely, within ten business days of the receipt of the request. M.G.L. c. 66, § 10(a) (amended Stat. 2016, ch. 121, § 10).

You have requested video and photographic footage taken by authorities during three specifically described search warrants executed in relation to the murder trial of Aaron Hernandez in 2013 and audio or video recordings of any interrogations conducted involving Aaron Hernandez and “others involved” including three named individuals. Your request for disclosure is denied because the records that you requested are exempt from the statutory definition of public records and are protected from disclosure by other statutes, rules, case law, or court orders. M.G.L. c. 4, § 7, cl. 26; c. 66, § 10.

The Public Records Law requires this office to set forth the exemptions justifying the denial of your request. Please note the following exemptions to the Public Records Law:

1. Criminal Offender Record Information

Information about identifiable individuals related to their criminal or judicial proceedings is generally exempted from disclosure under the statute on criminal offender record information (CORI). M.G.L. c. 6, §§ 167, 172, 178. CORI is defined as “records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-

trial proceeding, other judicial proceedings,... sentencing, incarceration...." M.G.L. c. 6, § 167. The disclosure of criminal record information outside of the statutory procedures set forth in chapter 6, sections 167 through 175 is illegal. M.G.L. c. 6, § 178 (punishable by imprisonment up to one year or by a fine of \$7,500, or both). The 2010 amendments to the CORI statutes were intended, in part, to protect the privacy of individuals who are the subject of judicial proceedings, including criminal defendants, to prevent unfair discrimination, and to deter recidivism.

Commonwealth v. Pon, 469 Mass. 296, 305-308 (2014). Further, the willful and unlawful dissemination of CORI is an actionable violation. M.G.L. c. 6, § 177; 803 C.M.R. 2:26. *Roggio v. Grasmuck*, 18 F.Supp. 3d 49, 53-54 (D.Mass. 2014) (successful suit for CORI violation committed by police officer in Massachusetts town); *Hamani v. Commonwealth Exec. Office of Pub. Safety & Sec.*, 2014 Mass. Super. LEXIS 193, *10 (Suffolk County, 2014).

Disclosure of CORI about an identified individual, M.G.L. c. 6, § 167, under the Public Records Law is contrary to both the language of the CORI statutes and their legislative intent. Under the Public Records Law, a requestor cannot be prohibited from publicly disclosing a document that was obtained through a public records request. See *Commonwealth v. Barnes*, 461 Mass. 644, 651 (2012) (heavy presumption against the constitutionality of prior restraint on public dissemination of communications). “[O]nce a record is deemed public it may be obtained by anyone upon request.” *A Guide to the Massachusetts Public Records Law*, Secretary of State’s Office, p.6 (2017). Therefore, these records are not subject to disclosure under the Public Records Law. They are subject to the criminal offender record information act and are not public records under M.G.L. c. 4, § 7, cl. 26 (a) (“specifically or by necessary implication exempted from disclosure by statute”). As noted above, the CORI statute prohibits the disclosure about identifiable individuals. M.G.L. c.6, §§ 167, 178.

The CORI statute only permits disclosure of CORI in particular situations, in most instances through the department of criminal justice information services (CJIS) for the specific purpose of protecting individual privacy rights. M.G.L. c. 6, §§ 167A, 172 (a), (l). *Hamani*, 2014 Mass. Super. LEXIS at *8-9. When properly obtained through CJIS, the requestor is prohibited from disseminating and from misusing such information, unlike dissemination through the Public Records Law. M.G.L. c. 6, §§ 172 (f), 178½. The requested materials are CORI and are exempt from the definition of public records. M.G.L. c. 4, § 7, cl. 26 (a) (“specifically or by necessary implication exempted from disclosure by statute”).

2. Individual Privacy Rights

Dissemination of CORI pursuant to the Public Records Law would be inconsistent with the statutory protections provided to such persons and could result in a violation of individual privacy rights. M.G.L. c. 214, § 1B; M.G.L. c. 4, § 7, cl. 26 (c) (materials related to a specifically named individual, that if disclosed would constitute an unwarranted invasion of privacy). See *Chalifoux v. Chalifoux*, 2017 U.S. App. LEXIS 13547, *5, n.5 (1st Cir. 2017) (claim of invasion of privacy under chapter 214, section 1B for disclosure of police report; court took no action).¹ Where the dissemination of these records would constitute an unwarranted

¹ The Commonwealth is immune from suit under the doctrine of sovereign immunity for violations of chapter 214, section 1B. *Whirty v. Lynch*, 27 Mass. App. Ct. 498, 500, rev. denied,

invasion of privacy under chapter 214, section 1B, the records are exempt from the Public Records Law. M.G.L. c. 4, § 7, cl. 26 (a) (protected from disclosure by another statute), § 26 (c) (unwarranted invasion of privacy to a specifically named individual). Please be further advised that the trial judge in this matter issued an order, on February 10, 2014, restricting public dissemination of information that was not presented in the trial court. That order was not specifically rescinded and there is an appellate case that remains pending. *Commonwealth v. Hernandez*, SJC-12501.

3. Records Obtained By Means Of A Search Warrant

You have requested video and photographs that were obtained as a result of a search warrant. Search warrants by definition are conducted with judicial supervision to search an area where an individual has a reasonable expectation of privacy. That area to be searched need not even be within the exclusive control of the suspect in an investigation. A search warrant may be used whenever a private location is searched, regardless of the identity of the person or persons who have a privacy interest in the location. See e.g. *Commonwealth v. Mubdi*, 456 Mass. 385, 391-395 (2010), citing U.S. Const., Amend. IV; Massachusetts Declaration of Rights, art. 14. The Massachusetts Legislature therefore has determined that property or articles seized during the execution of a search warrant is subject to judicial supervision. M.G.L. ch. 276, § 3. Video and photography obtained during the execution of a search warrant has been deemed to be evidence seized during the execution of a search warrant. *Commonwealth v. Balicki*, 436 Mass. 1, 10-13 (2002). Release of video and photography seized during the execution of a search warrant can only be done with judicial supervision and would violate the privacy of any person who had a reasonable expectation of privacy in that location. As such, the requested video and photography are not public records. M.G.L. c. 214, § 1B; M.G.L. c. 4, § 7, cl. 26 (c) (materials related to a specifically named individual, that if disclosed would constitute an unwarranted invasion of privacy).

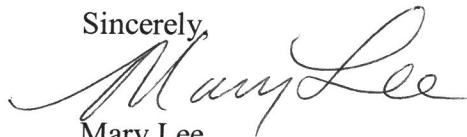
4. Statements of identifiable witnesses

You have requested audio or video recordings of any interrogations conducted involving Aaron Hernandez and “others involved” including three named individuals. Statements of identifiable individuals who served as witnesses and who reported information to the police are exempt from disclosure under the investigatory exception to the Public Records Law. M.G.L. c. 4, § 7, cl. 26(f). According to the *Massachusetts Guide to Public Records*, p. 20 (2017), “The legislature also designed the exemption to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly about matters under investigation. Any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness are indefinitely exempt.” *Id.* citing *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 438 (1983)

405 Mass. 1204 (1989); *Doe v. Holmes*, 2012 Mass. Super. LEXIS 266, *17 (Suffolk County, 2012). Immunity, however, cannot compel the Commonwealth to violate its own statutes that are designed to protect individual privacy. Further, the Commonwealth does not have immunity for willful violations of the CORI statute. *Whirty v. Lynch*, 27 Mass. App. Ct. at 500; M.G.L. c. 6, § 177.

(explanation of “identifying details” and “grave risk of indirect identification”). The recordings of witness interviews do not constitute public records because the public dissemination of the individual’s own voices constitutes an invasion of privacy to defendants, witnesses, and/or families of the victims. *Commonwealth v. Winfield*, 464 Mass. 672, 683 (2013) (recording of witness testimony by court reporter was not part of the court records and its dissemination would invade privacy rights).

None of the requested materials are public records. Where this letter constitutes a denial of the public records request, please be advised that you have the right to appeal to the Supervisor of Public Records and to seek a judicial remedy in Superior Court pursuant to 950 C.M.R. 32.06(3)(c); 950 C.M.R. 32.08(1); M.G.L. c. 66, §§ 10(b), 10A(a).

Sincerely,

Mary Lee
Assistant District Attorney
Bristol District

cc: North Attleboro Police Department